

BEFORE THE
Federal Communications Commission

WASHINGTON, D. C. 20554

RECEIVED
DOCKET FILE COPY ORIGINAL
AUG 26 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations)
(Banks, Redmond, and Corvallis, Oregon))

MM DOCKET NO. 96-7
RM-8732

and)

Amendment of Section 73.202(b),)
Table of Allotments,)
FM Broadcast Stations)
(The Dalles and Corvallis, Oregon))

MM DOCKET NO. 96-12
RM-8741

and)

In re Application of)

MADGEKAL BROADCASTING, INC.)
Station KFLY(FM), Corvallis, Oregon)

File No. BPH-960206IE

For Construction Permit to Modify)
Licensed Facilities (One-Step Upgrade))

To: Chief, Allocations Branch
Mass Media Bureau

**FURTHER COMMENTS IN SUPPORT OF
JOINT REQUEST FOR APPROVAL OF AGREEMENT**

Madgekal Broadcasting, Inc. ("MBI"), licensee of Station KFLY(FM), Corvallis, Oregon, and American Radio Systems License Corp. ("ARS"), licensee of Station KBBT-FM (formerly KDBX), Bank, Oregon, herein submit further comments in support of the "Joint Request for Approval of Agreement" ("Joint Request"), filed in the above-captioned proceedings on March 20, 1997.

No. of Copies rec'd
List ABOVE

024

Background

A brief reiteration of the circumstances leading to the Joint Request may be helpful. ARS' predecessor in interest, Common Ground Broadcasting, Inc., filed a rulemaking proposal to upgrade KBBT-FM's allotment from Channel 298C2 to Channel 298C1. In order to accomplish the upgrade, it will be necessary to substitute Channel 269C2 for Channel 298C2 as the allotment for Station KLRR(FM), Redmond, Oregon. The licensee of KLRR, Combined Communications, Inc., has consented to the frequency change.

An unrelated rulemaking petition was filed by LifeTalk Broadcasting Association ("LifeTalk"), in which it requested allotment of Channel 268C3 to The Dalles, Oregon and reservation of the channel for noncommercial educational use. The Banks/Redmond rulemaking proposal was not mutually exclusive with that for The Dalles. The two proceedings, however, became tied together as the result of MBI's February 6, 1996 one-step upgrade construction permit application. Through the application, MBI sought to change KFLY's allotment from Channel 268C2 to Channel 268C. That application is mutually exclusive with the allotment of Channel 269C2 at Redmond and the allotment of Channel 268C3 at The Dalles.

The Joint Request is the product of negotiations between ARS and MBI. Stated succinctly, MBI will live with Class C1 facilities, rather than full Class C facilities, in return for a monetary payment from ARS. Amendment of MBI's modification application to specify Class C1 facilities, instead of Class C facilities, will permit adoption of the Banks/Redmond proposal as well as The Dalles proposal, with a site restriction.

Recent Developments

The Commission's recent decision in Gonzales Broadcasting, Inc., FCC 97-283 (released August 12, 1997), underscores the public interest benefits of resolving conflicts between mutually exclusive proposals through negotiated settlements. In Gonzales, the Commission waived Section 73.3525(a)(3) of its Rules, which prohibits paying a dismissing applicant more than its reasonable and prudent expenses. By granting such a waiver, the Commission was following the directive of Congress set forth in Section 3002(a)(3) of the Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997). But the Commission also said in Gonzales, it would "look favorably" on requests to waive certain other policies "where this would serve to facilitate settlement." FCC 97-283 at ¶10. Of course, MBI and ARS recognize the Gonzales decision was made in a different procedural context (*i.e.*, competing construction permit applications for a new FM station). Nonetheless, the same policy of facilitating settlements should be applied here.

As discussed in the Joint Petition, ARS and MBI do not believe that their proposed settlement contravenes or requires a waiver of any Commission rule. But even if the Commission determines that approval of the Joint Petition would require a waiver of Section 73.3525(a)(3) and/or Section 1.420(j) of the Rules, Gonzales indicates such a waiver would be in the public interest.

Significantly, in adopting the competitive bidding provisions of the Balanced Budget Act, Congress emphasized that the Commission must still try to eliminate mutual exclusivity through use of, *inter alia*, negotiations. See CONG. REC. (daily ed. July 29, 1997) H6173 (discussion, in Conference Report regarding Section 3002(a) of Balanced Budget Act of 1997, of the Commission's

continuing obligations under §309(j)(6)(E) of the Communications Act, which directs the Commission to “use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings”).

By approving the settlement presented, the Commission will (a) facilitate the prompt improvement of service by KBBT-FM and KFLY, (b) pave the way for a new FM service at The Dalles, Oregon, and (c) conserve the time and resources of the Commission and the parties by bringing the above-captioned proceedings to an end. These public interest benefits are not offset by other factors. As explained in the Joint Petition, the circumstances present are not the product of any artful manipulation of the Commission’s processes. Rather, the parties, after exercising in good faith the prerogatives the Rules provide, found themselves in conflict. Given the unusual nature of both that conflict and its resolution, approval of the proffered settlement will not invite abuse of either the allotment or one-step upgrade processes.

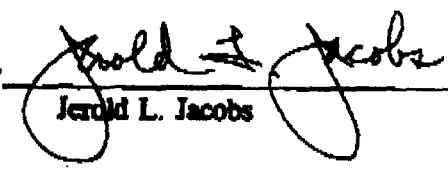
WHEREFORE, in light of all circumstances present, it is respectfully requested that this supplement be ACCEPTED and that the relief requested in the Joint Petition be GRANTED.

MADGEKAL BROADCASTING, INC.


By _____
Matthew H. McCormick

REDDY, BEGLEY & McCORMICK
2175 K Street, N.W., Suite 350
Washington, D.C. 20037
(202) 659-5700

AMERICAN RADIO SYSTEMS LICENSE CORP.


By _____
Jerold L. Jacobs

ROSENMAN & COLIN LLP
1300 19th Street, N.W., Suite 200
Washington, D.C. 20036
(202) 463-4640

August 26, 1997

CERTIFICATE OF SERVICE

I, Pamela R. McKethan, hereby certify that on this 26th day of August, 1997, copies of the foregoing FURTHER COMMENTS IN SUPPORT OF JOINT REQUEST FOR APPROVAL OF AGREEMENT were hand-delivered or mailed, first-class, postage prepaid, to the following:

John A. Karousos, Chief *
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W., Room 554
Washington, D.C. 20554

Andrew J. Rhodes, Esquire *
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W., Room 554
Washington, D.C. 20554

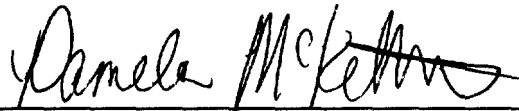
Ms. Leslie K. Shapiro *
Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
2000 M Street, N.W., Room 564
Washington, D.C. 20554

J. Dominic Monahan, Esquire
Luvaas Cobb Richards & Fraser, P.C.
777 High Street, Suite 300
Eugene, Oregon 97401
Counsel for Combined Communications, Inc.

Roger J. Metzler, Esquire
Keck, Mahin & Cate
One Maritime Plaza, 23rd Floor
San Francisco, California 94111-3577
Counsel for Hurricane Communications, Inc.

2.

Donald E. Martin, Esquire
Donald E. Martin, P.C.
P.O. Box 19351
Washington, D.C. 20036
Counsel for LifeTalk Broadcasting Association

A handwritten signature in black ink, appearing to read "Pamela McKethan", written over a horizontal line.

Pamela R. McKethan

* HAND DELIVERED